Supreme Court, U.S.
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No. 10-915

In the

Supreme Court of the United States

CITY OF CLEVELAND,

Petitioner,

v.

AMERIQUEST MORTGAGE SECURITIES, INC., ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Robert J. Triozzi
Director
CITY OF CLEVELAND LAW DEPARTMENT
Cleveland City Hall
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114
(216) 664-2800

Joshua R. Cohen
Counsel of Record
Jason R. Bristol
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building
Suite 400
700 West St. Clair Avenue
Cleveland, Ohio 44113
(216) 781-7956
jcohen@crklaw.com

Counsel for Petitioner

January 12, 2011

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED

Under *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), to what extent can a federal court sitting in diversity predict governing state law on the basis of federal precedent that construes federal law?

PARTIES TO THE PROCEEDING

The City of Cleveland, Ohio is the Petitioner in these proceedings. The Respondents include the following:

Ameriquest Mortgage Securities, Inc.
Bank of America, N.A.
Citibank, N.A.
Citigroup Global Markets, Inc.
Countrywide Securities Corporation
Credit Suisse First Boston LLC
Credit Suisse (USA), Inc.
Deutsche Bank Securities, Inc.
Goldman Sachs & Co.
Greenwich Capital Markets, Inc.
HSBC Securities (USA), Inc.
JP Morgan Acquisition Corp.
Chase Bank U.S.A., N.A.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co., Inc.
Novastar Mortgage, Inc.
Option One Mortgage Corporation
Washington Mutual Bank
Wells Fargo Bank, N.A.
Wells Fargo Asset Securities Corporation

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PETITION FOR A WRIT OF CERTIORARI

The City of Cleveland respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's decision is reported at 615 F.3d 496 and appears in the Appendix at 1a-23a. The decision of the United States District Court for the Northern District of Ohio is reported at 621 F. Supp. 2d 513 and appears in the Appendix at 24a-72a.

JURISDICTION

The Sixth Circuit issued its judgment on July 27, 2010. On October 14, 2010, the court denied the City of Cleveland's petition for rehearing and rehearing en banc. Pet. App. 26a. Cleveland invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

This petition involves Federal Rule of Civil Procedure 12(b)(6). Pet. App. 75a.

STATEMENT OF THE CASE

I. Introduction

This petition concerns federal courts' latitude to predict state law on unsettled questions for purposes of deciding diversity cases. More specifically, it addresses the constitutionality of formulating state-

law rules in such actions based upon federal case law interpreting federal law.

The court of appeals in this case took this exact course. In doing so, it terminated a claim by the City of Cleveland that sought to apply common-law public nuisance doctrine to the recent financial meltdown and foreclosure crisis. Cleveland sued 21 investment banks that had financed subprime mortgages in the City, claiming that the defendants knew or should have known that their activity would subject Cleveland to an epidemic of foreclosures and other attendant injuries.

With its lawsuit, Cleveland is attempting to extend settled state law to a new context, created by contemporary circumstances. The case has received extensive coverage from the national news media,[1] generated considerable legal commentary,[2] and

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[1] CHRISTOPHER MAAG, "CLEVELAND SUES 21 LENDERS OVER SUBPRIME MORTGAGES," *NEW YORK TIMES* (Jan. 11, 2008); "CLEVELAND SUES BIG BANKS OVER SUBPRIME FALLOUT," *NATIONAL PUBLIC RADIO* (Jan. 11, 2008); MICHAEL HIRSH, "MORTGAGES AND MADNESS," *NEWSWEEK* (MAY 24, 2008); RICK KARR, "MORTGAGE MELTDOWN," *BILL MOYERS JOURNAL* (JULY 18, 2008); MARK WINSTON GRIFFITH, "THE BEST OF 2008: GOING AFTER THE PREDATORY LENDERS," *www.huffingtonpost.com* (Dec. 12. 2008); DAVID ELLIS, "WALL STREET 1, CLEVELAND 0: CITY CAN'T SUE BANKS FOR BAD LOANS," *CNNMONEY.COM* (July 28, 2010).

[2] *See, e.g.*, CREOLA JOHNSON, "FIGHT BLIGHT: CITIES SUE TO HOLD LENDERS RESPONSIBLE FOR THE RISE IN FORECLOSURES AND ABANDONED PROPERTIES," 2008 *UTAH L. REV.* 1169 (2008); KYLE CUTTS, "CITY ON THE BRINK: THE CITY OF CLEVELAND SUES WALL STREET FOR PUBLIC NUISANCE," 58 *CASE W. RES. L. REV.* 1399 (2008); MELISSA C. KING, "RECOUPING COSTS FOR REPAIRING

inspired a documentary that debuted at the Cannes International Film Festival.[3] The court of appeals, however, preempted the action, affirming dismissal almost solely in reliance upon federal case law.

II. Procedural History

Cleveland filed this lawsuit on January 10, 2008 in Ohio state court. The 21 defendants removed it to the United States District Court for the Northern District of Ohio on the basis of diversity of citizenship. Cleveland's Complaint contained one count for public nuisance. The City retained this single claim in its Second Amended Complaint, which both added and eliminated certain defendants. Pet. App. 80a-102a.

On May 15, 2009, the District Court dismissed this lawsuit in its entirety under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Pet. App. 24a-72a. The court of appeals affirmed on July 27, 2010, based exclusively upon Cleveland's purported failure to plead proximate causation. Pet. App. 1a-23a. On October 14, 2010, the court of appeals denied the City's motion for rehearing en banc. Pet. App. 73a-74a.

BROKEN WINDOWS: THE USE OF PUBLIC NUISANCE BY CITIES TO HOLD BANKS LIABLE FOR THE COSTS OF MASS FORECLOSURES," 45 *TORT & INS. L. J.* 97 (2009); S. ADELINE MCKINNEY, "MUNICIPALITIES FIGHT EFFECTS OF FORECLOSURE WITH LITIGATION AND NEIGHBORHOOD STABILIZATION PROGRAM GRANTS," 14 *N.C. BANKING INST.* 257 (2010); MATTHEW SAUNIG, "REBRANDING PUBLIC NUISANCE: *CITY OF CLEVELAND V. AMERIQUEST MTG. SEC., INC.* AS A FAILED RESPONSE TO ECONOMIC CRISIS," 59 *CATHOLIC U. L. REV.* 911 (2010).

[3] *Cleveland vs. Wall Street* (Saga Prod. 2010).

III. The Claim for Public Nuisance

Between 2002 and 2007, the annual number of foreclosures consummated in Cleveland increased from a few hundred to more than 7,500. SECOND AMENDED COMPLAINT ("SAC"), ¶12. An average of 20 Cleveland homeowners faced foreclosure each day during 2007. *Id.*, ¶61. This surge was a distinctly subprime phenomenon. Over the three-year period ending in early 2008, more than 80 percent of all foreclosures in Cleveland involved subprime mortgages. The subprime foreclosure rate exceeded the rate on conventional loans by more than 800 percent. At the time this lawsuit began in 2008, a full third of the subprime loans made in Cleveland during 2005 had already ended in default and foreclosure. *Id.*, ¶13.

Each and every foreclosure that took place in Cleveland created certain tangible costs for the City. These included increased expenditure for fire and police protection, maintenance costs, and the cost of demolition. In any individual case, Cleveland's expenses can range well into the five figures. SAC, ¶64. Foreclosures also ravaged Cleveland's property-tax revenues, the amount of which turns upon the appraised value of real estate in the City. *Id.*, ¶65-¶66. All told, the City's losses range well into the millions.

The defendants each financed subprime mortgages in Cleveland through the process of securitization. SAC, ¶15-¶34. In this lawsuit, the City has alleged that these parties knew or should have known that this activity would cause a tidal wave of foreclosures, bringing with it all of the attendant damage sustained by Cleveland. *Id.*, ¶53, ¶67, ¶69. Cleveland's unique

economic plight made this so. While the rest of the country experienced a housing bubble, home values stagnated in the City, which ranked among the nation's poorest. Median income rates faltered during the heyday of subprime, as did Cleveland's overall economy. *Id.*, ¶53-¶55.

The City simply lacked the wherewithal to absorb the massive influx of subprime financing engineered by the defendants. The foreclosure crisis represented the foreseeable and inevitable result of their securitization activity. Cleveland based its public nuisance claim upon these allegations.

IV. Ohio Law of Proximate Causation

Ohio has well-developed and longstanding jurisprudence on proximate causation, which it generally treats as an issue of fact. *Strother v. Hutchinson*, 67 Ohio St. 2d 282, 288, 423 N.E.2d 467 (1981). This element of tort law entails "some reasonable connection between the act or omission of the defendants and the damage the plaintiff has suffered." *Queen City Terminals v. General Am. Transp.*, 73 Ohio St. 3d 609, 618, 653 N.E.2d 661 (1995) (quotation marks omitted).

More specifically, proximate cause exists where the plaintiff's injury "would not have taken place" but for the "natural and continuous" chain of events triggered by the defendants' misconduct. *Clinger v. Duncan*, 166 Ohio St. 216, 222, 141 N.E.2d 156 (1957). The defendants also must have reasonably foreseen the harm resulting from their actions. *Mudrich v. Standard Oil Co.*, 153 Ohio St. 31, 39, 90 N.E.2d 859 (1950). With respect to this last requirement, if an

"event causing injury appears to have been closely related to the damage created by the original conduct, it is regarded as within the scope of the risk, even though ... the particular injury would not have been" reasonably expected. *Di Gildo v. Caponi*, 18 Ohio St. 2d 125, 130, 247 N.E.2d 732 (1969).

An independent "intervening" act or incident can extinguish proximate cause. *Queen City*, 73 Ohio St. 3d at 619. It will not do so, however, if the defendants could have "reasonably foreseen" that the "intervening event" was "likely to happen." *Taylor v. Webster*, 12 Ohio St. 2d 53, syllabus ¶2, 231 N.E.2d 870 (1967).

"There [also] may be more than one proximate cause of an injury." *Taylor*, 12 Ohio St. 2d at 57; *accord*, *Murphy v. Carrolton Mftg. Co.*, 61 Ohio St. 3d 585, 588, 575 N.E.2d 828 (1991). This circumstance arises where various forces (including the defendants' misconduct) each constitutes a "substantial factor" in causing the plaintiff's injury. *Queen City*, 73 Ohio St. 3d at 617.

V. The Court of Appeals' Decision

The court of appeals did not apply or even acknowledge any of these principles in determining that Cleveland failed to plead proximate cause. Instead, the court based its decision on the City's supposed inability to prove a "direct injury" resulting from the defendants' conduct. The court held that "the requirement of a direct injury is a 'central element' of proximate cause." *Id.* It drew this conclusion not from Ohio Supreme Court precedent but from *Perry v. American Tobacco Co.*, 324 F.3d 845 (6th Cir. 2003), a decision construing the requirement of proximate

cause under the federal RICO statute. *Id.* at 848. The court reinforced this premise by turning to another RICO decision, *Holmes v. SIPC*, 503 U.S. 258 (1992):

> The directness requirement "requires some direct relation between the injury asserted and the injurious conduct alleged."

Pet App. 13a, *quoting Holmes*, 503 U.S. at 268.

The court of appeals asserted that the Ohio Supreme Court, in *City of Cincinnati v. Beretta USA Corp.*, 95 Ohio St. 3d 416, 768 N.E.2d 1136 (2002), "adopted ... the *Holmes* ... proximate cause analysis." Pet App. 13a. From this premise, the panel proceeded to evaluate Cleveland's pleading pursuant to the decision of this Court and its federal progeny. *Id.*, pp. 13a-21a The panel predicted that the Ohio Supreme Court would do likewise if confronted with the City's case, since it had "previously adopted the directness requirement" articulated in *Holmes*. *Id.*, p. 15a.

Beretta, however, did not abandon established proximate cause standards in favor of *Holmes*. The decision states only that in "*some* [unspecified] common law cases," the plaintiff must establish a "direct relation between the injury asserted and injurious conduct alleged." 95 Ohio St. 3d at 426 (emphasis added). The court held as such in considering the issue of remoteness, not explicitly in connection with any proximate cause analysis. *Id.*

Following *Beretta*, not a single reported case construing Ohio common law enforces the "direct injury" test pursuant to either the Ohio Supreme Court decision or *Holmes*. Nor does any Ohio court

cite the federal decisions ensuing from *Holmes* which underlie the court of appeals' finding that Cleveland had inadequately pled proximate cause. *See Anza v. Ideal Steel Sup. Corp.*, 547 U.S. 451 (2006); *Canyon Cty. v. Syngenta Seeds, Inc.*, 519 F.3d 969 (9th Cir.), *cert. denied*, 129 S.Ct. 458 (2008).

In predicting Ohio law based upon federal authorities, the court of appeals did not consider the possibility that injuries can have more than one proximate cause. *Murphy*, 61 Ohio St. 3d at 588. The court did not acknowledge that proximate cause may exist with respect to an "event causing injury [that] appears to have been closely related to the damage created by the [defendants'] original conduct." *Di Gildo*, 18 Ohio St. 2d at 130. The court also did not take into account the fact that "intervening events" reasonably foreseen by the defendants do not extinguish proximate causation. *Taylor*, syllabus ¶2. Each of these Ohio rules belies the court's finding that the absence of "direct injury" negated proximate cause.

The court of appeals' forecast concerning the preeminence of the "direct injury" standard also ignored what the Ohio Supreme Court had to say about *Holmes*. *Beretta* involved public nuisance claims brought by the City of Cincinnati against gun manufacturers over the way they produced and distributed their products. The Ohio Supreme Court found that a "direct" relation existed between Cincinnati's injury and the defendants' alleged wrongdoing. *See* 95 Ohio St. 3d at 427.

The court of appeals, however, chose essentially to forego any consideration of this analysis, which speaks directly to Cleveland's public nuisance claim, given the

marked similarities between the two cases. Instead, the court distinguished *Beretta* based upon considerations extraneous to the Ohio Supreme Court's application of the "direct injury" test. Pet App. 18a-19a. In this respect, the court of appeals ignored *Beretta* in predicting how it would decide Cleveland's public nuisance case.

REASONS FOR GRANTING THE WRIT

I. The Court has never precisely identified the means by which federal courts should resolve unsettled issues of state law.

In *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), the Court banished the practice of deciding diversity actions on the basis of "federal general common law." *Id.* at 78. The court in such cases must instead "apply the substantive law of the forum State, absent a federal statutory or constitutional directive to the contrary." *Salve Regina College v. Russell*, 499 U.S. 225, 226 (1991). The holding in *Erie* is "constitutionally compelled," and "not simply ... a salutary rule of judicial administration." *Allstate Ins. Co. v. Menards, Inc.*, 285 F.3d 630, 634 (7th Cir. 2002). The decision represents "one of the modern cornerstones of our federalism, expressing policies that profoundly touch the allocation of judicial power between the state and federal systems." *Hanna v. Plumer*, 380 U.S. 460, 474 (1965) (Harlan, J., concurring).

Erie recognizes the decisions of a state's "highest court" as the source of its common law. 304 U.S. at 78. The Court later held that in the absence of such controlling precedent, determination of state law may

derive from lower state court decisions and other "available data." *West v. American Tel. & Tel.*, 311 U.S. 223, 237 (1940). The Court, however, has never precisely identified the means by which federal courts should resolve unsettled issues of state law.

II. The prediction of state law in diversity cases implicates fundamental tenets of federalism.

Lower federal courts, in fact, have "don[ned] the soothsayer's garb" to define state law in diversity cases where no state supreme court precedent directly applies. *Official Committee of Unsecured Creditors v. R.F. Lafferty & Co.*, 267 F.3d 340, 349 (3d Cir. 2001). In such instances, federal judges undertake to "make an informed prophecy – to discern the rule the state's highest court would be most likely to follow under [the] circumstances." *Janney Montgomery Scott LLC v. Tobin*, 571 F.3d 162, 164 (1st Cir. 2009) (quotation marks omitted).[4]

This approach presents several potential pitfalls. Federal courts are frequently wrong in predicting state law in diversity cases. *See* DOLORES K. SLOVITER, "A FEDERAL JUDGE VIEWS DIVERSITY JURISDICTION

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[4] *See also Runner v. NYSE*, 568 F.3d 383, 386 (2d Cir. 2009); *Ellis v. Grant Thornton LLP*, 530 F.3d 280, 287 (4th Cir.), *cert. denied*, 129 S.Ct. 652 (2008); *Chaney v. Dreyfus Serv. Corp.*, 595 F.3d 219, 229 (5th Cir. 2010); *Mazur v. Young*, 507 F.3d 1013, 1016 (6th Cir. 2007); *Curtis Lumber Co. v. Louisiana Pac. Corp.*, 618 F.3d 762, 771-72 (8th Cir. 2010); *Giles v. General Mot. Acceptance Corp.*, 494 F.3d 865, 872 (9th Cir. 2007); *Williams v. United Parcel Serv.*, 527 F.3d 1135, 1140 (10th Cir. 2008); *CSX Trans. v. Trism Specialized Carriers*, 182 F.3d 788, 790 (11th Cir. 1999).

THROUGH THE LENS OF FEDERALISM," 78 *VA. L. REV.* 1671, 1680-81 (1992). Erroneous rulings of this kind

> inevitably skew the decisions of persons and businesses who rely on them and inequitably affect the losing federal litigant who cannot appeal the decision to the state supreme court.

Id. at 1681. "[T]hey may even mislead lower state courts that may be inclined to accept federal predictions as applicable precedent." *Id.*

Moreover, federal courts lack any "inherent power to make state law, such as a state court might have." *Lexington Ins. Co. v. Rugg & Knopp, Inc.*, 165 F.3d 1087, 1093 (7th Cir. 1999). Their role in "diversity cases is to interpret state law, not to fashion it." *Orion Fin. Corp. v. American Foods Group*, 281 F.3d 733, 738 (8th Cir. 2002). They must rule as they think the state's highest court would, and not "do merely what [they] think best." *Calbillo v. Cavender Oldsmobile*, 288 F.3d 721, 729 (5th Cir. 2002) (quotation marks omitted).

Federal courts cannot blaze "new trails" or "significantly expand existing rules" of state law in deciding diversity cases. *Phoung Luc v. Wyndham Mgmt. Corp.*, 496 F.3d 85, 88-89 (1st Cir. 2007) (quotation marks omitted). They must avoid "elbow[ing]" their way into a "controversy to render what may be an uncertain and ephemeral interpretation of state law." *Time Warner Enter.-Advance/Newhouse Partnership v. Barteret-Craven Elec. Membership Corp.*, 506 F.3d 304, 314 (4th Cir. 2007) (quotation marks omitted).

As these considerations suggest, "when state law is unclear, efforts by federal courts to 'predict' how a state's highest court would rule raise judicial federalism concerns." *Michaels v. State of New Jersey*, 150 F.3d 257, 259 (3d Cir. 1998) (Alito, J.) (quotation marks omitted). Such "predictions" intrinsically create the "potential for significant intrusion" upon states' exclusive authority to establish and develop state law. *Menards*, 285 F.3d at 638. What begins as "prediction" frequently transforms into "state lawmaking by federal courts," where decisions meaningfully alter the trajectory of existing jurisprudence. *See* SLOVITER, 78 *VA. L. REV.* at 1687. This "state lawmaking" comes from federal judges "who are not selected under the state's system and who are not answerable to its constituency." *Id.*

Moreover, taking place in the absence of binding state precedent, federal "'prediction' of state law" may effectively involve "little more than a choice among competing policy considerations" – an exercise uniquely within the province of the states themselves. *See* BRADFORD R. CLARK, "ASCERTAINING THE LAWS OF THE SEVERAL STATES: POSITIVISM AND JUDICIAL FEDERALISM AFTER ERIE," 145 *U. PA. L. REV.* 1459, 1499 (1997). By performing this role, federal courts "prevent the informed evolution of state policy by state tribunals." *Todd v. Societe Bic, S.A.*, 21 F.3d 1402 (7th Cir.), *cert. denied*, 513 U.S. 947 (1994), *quoting Moore v. Sims*, 442 U.S. 415, 429-30 (1979).

The court of appeals' decision presents a case in point. Faced with a unique fact pattern, the court putatively extrapolated from existing Ohio precedent to formulate a workable standard for assessing proximate cause. The result, however, either obviated,

obscured, or deviated from longstanding principles articulated by the Ohio Supreme Court. The court of appeals explained that it was trying to "anticipate" how the Ohio Supreme Court would treat Cleveland's claim for public nuisance. *See* Pet. App. 13a. In reality, it engaged in "state lawmaking" that dramatically changed controlling doctrine under Ohio law. *See* SLOVITER, 78 *VA. L. REV.* at 1687.

In the process, the court of appeals derailed a lawsuit where substantial state interests were at stake. Cleveland's public nuisance claim addresses the nature and extent of cities' right to redress in the wake of the subprime foreclosure crisis. This is an emerging issue with broad-ranging implications. *See generally* RAYMOND H. BRESCIA, "TAINTED LOANS: THE VALUE OF A MASS TORTS APPROACH IN SUBPRIME MTG. LITIG.," 78 *U. CIN. L. REV.* 1 (2009). Its resolution should come from the "informed evolution of state policy in state tribunals," rather than a federal court's usurpation of this function. *See Todd*, 21 F.3d at 1414.

III. Federal courts effectively reinstate the practice banned in *Erie* when they make a state-law prediction based on federal decisions interpreting federal law.

The court of appeals' "prediction" of Ohio law becomes particularly objectionable in light of its reliance upon federal precedent interpreting federal law. Ordinarily, lower courts look to "relevant state precedents, analogous decisions, ... dicta, [and] scholarly works," among "other reliable data," in attempting to prognosticate how "the highest court in the state" would resolve open questions of law. *Wayne Moving & Storage v. School Dist.*, 625 F.3d 148, 154

(3d Cir. 2010); *see also Janney*, 571 F.3d at 164; *Curtis Lumber Co.*, 618 F.3d at 771. In this vein, they have considered "federal cases interpreting state law." *Canal Ins. Co. v. Underwriters at Lloyd's London*, 435 F.3d 431, 436 (7th Cir. 2006); *see also Chase Manhattan Bank v. T&N plc*, 905 F. Supp. 114 (S.D.N.Y. 1995).

Yet federal courts reinstate the protocol banned by *Erie* when they make state-law "predictions" based on federal decisions construing federal law. "[F]ederal general common law" effectively controls in such situations, rather than any semblance of state-law principles. *Erie*, 304 U.S. at 78. By proceeding in this fashion, federal courts seize for themselves the authority to "exercise an independent judgment as to what the common law of the state is – or should be." *Id.* at 71. These circumstances obviously tread upon the principles of federalism. *See Boyle v. United Tech. Corp.*, 487 U.S. 500, 517 (1988) (Brennan, J., dissenting) (federal courts "seriously implicate[ ]" such concerns when they "displace the state law that would ordinarily govern with their own rules of federal common law").

IV. The Court should hold that federal courts may not predict state law in diversity cases on the basis of federal precedent interpreting federal law, absent an explicit directive from the state's highest court to proceed in this fashion.

The Court "has never squarely endorsed the predictive approach" for resolving uncertain issues of state law in diversity cases. CLARK, 145 *U. PA. L. REV.*

at 1495.[5] It also has never set any standards for lower courts' use of this method to discharge their responsibilities under *Erie*. A compelling need arises for such guidance, given the "potential for significant intrusion" upon states' constitutional prerogatives and the potentially "disastrous" consequences of an erroneous "prediction." *See Menards*, 285 F.3d at 638. The court of appeals' decision especially cries out for review, given the "state lawmaking" that it embodies and its implicit hostility to *Erie* and the fundamental tenets of federalism. *See* SLOVITER, 78 *VA. L. REV.* at 1687.

The Court should hold that federal courts may not predict state law in diversity cases on the basis of federal precedent interpreting federal law, absent an explicit directive from the state's highest court to proceed in this fashion. Such a rule would vindicate *Erie* by ensuring that "federal general common law" does not return as the basis for deciding these cases. *Erie*, 304 U.S. at 78. It would encourage closer adherence to the state authorities that should control in diversity cases, thereby reducing the prospect for federal encroachment upon states' lawmaking function. And it would enable the Court to rectify the injustice done in this action, where the overreaching application of federal law served to vanquish an important state-law claim.

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[5] *But see Bernhardt v. Polygraphic Co.*, 350 U.S. 198, 209 (1956) (Frankfurter, J., concurring) ("As long as there is diversity jurisdiction, 'estimates' are necessarily often all that federal courts can make in ascertaining what the state could would rule to be its law").

CONCLUSION

The court of appeals' decision implicates *Erie* and the principles of federalism that *Erie* vindicates. For the reasons discussed above, the Court should grant this petition for certiorari.

Respectfully submitted,

Joshua R. Cohen
Counsel of Record
Jason R. Bristol
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building – Suite 400
700 West St. Clair Avenue
Cleveland, Ohio 44113
(216) 781-7956
jcohen@crklaw.com

Robert J. Triozzi
Director
CITY OF CLEVELAND LAW DEPARTMENT
Cleveland City Hall
601 Lakeside Avenue- Room 106
Cleveland, Ohio 44114
(216) 664-2800

Counsel for Petitioner the City of Cleveland